

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: March 27, 2012

1. ITR No. 17 of 1996 (Assessment Year 1982-83)
Commissioner of Income-tax (Central), Ludhiana ...Applicant
Versus
Smt. Ved Wati Munjal ...Respondent
2. ITR No. 18 of 1996 (Assessment Year 1982-83)
Commissioner of Income-tax (Central), Ludhiana ...Applicant
Versus
Shri Suresh Chand Munjal ...Respondent
3. ITR No. 22 of 1996 (Assessment Year 1982-83)
Commissioner of Income-tax (Central), Ludhiana ...Applicant
Versus
Shri Ashish Kumar ...Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE ALOK SINGH

Present: Ms. Savita Saxena, Advocate,
for the applicant-revenue.

Mr. Alok Mittal, Advocate,
for the respondent-assessee(s).

1. To be referred to the Reporters or not?
2. Whether the Judgment should be reported in the Digest

M.M. KUMAR, J.

1. This order shall dispose of I.T.R. Nos. 17, 18 and 22 of 1996. These references have emerged from identical orders dated 14.11.1994, passed by the Income Tax Appellate Tribunal, Chandigarh Bench (for brevity, 'the Tribunal') in ITA Nos. 1039/Chandi/1989; 1076/Chandi/1989; and 1042/Chandi/1989, in

respect of Assessment Year 1982-83 in the cases of the respondent-assessee(s). At the instance of the revenue, the Tribunal has referred identical question of law for the opinion of this Court by exercising jurisdiction under Section 256(1) of the Income-tax Act, 1961 (for brevity, 'the Act'). The question of law framed in ITR No. 17 of 1996 reads as under:-

“Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the share income attributable to 40% of the assessee's right, title and interest of her share income in M/s Munjal Gases was to be excluded from the assessee's total income?”

2. At the outset, learned counsel for the revenue has fairly stated that the above mentioned question of law has already been answered by this Court against the revenue and in favour of the assessee in the case of Commissioner of Income Tax (Central) Ludhiana v. Pawan Kant (ITR No. 7 of 1989, Assessment Year 1981-82, decided on 30.8.2004). In Pawan Kant's case (supra) the Division Bench in turn noticed that the question of law, in fact, stands already decided by this Court in the case of Commissioner of Income Tax v. Bhagat Singh, (1998) 229 ITR 239, wherein it has been held that the assets received by an assessee on partition and accretion thereto upto the date of marriage of the assessee did not cease to be HUF property and the income of such property was assessable in the hands of the HUF constituted by him with his daughter. The plea of the revenue that there must be atleast two male members to form a HUF as taxable entity was specifically rejected. Following the said judgment and agreeing with the view

taken by the Tribunal, the Division Bench in Pawan Kant's case (supra) has summed up as under:

“ Respectfully following the aforesaid judgment, we are of the view that the Tribunal was right in holding that the property received by the assessee on partition of the HUF continues to be joint family property in his hands and the income therefrom after his marriage was assessable in the hands of the HUF constituted by him with his wife. Similar view has also been expressed by a Full Bench of the Patna High Court in Commissioner of Income-Tax v. Shankar Lal Budhia, (1987) 165 I.T.R. 380 and by the Full Bench of the Madhya Pradesh High Court in Commissioner of Income-Tax, M.P. 1 v. Krishan Kumar, (1983) 143 I.T.R. 462. Accordingly, the question is answered in the affirmative i.e. in favour of the assessee and against the revenue.”

3. Respectfully following the opinion expressed by the Division Bench of this Court in the case of Pawan Kant (supra), the referred question is decided against the revenue and in favour of the assessee(s).

4. The references are disposed of.

5. A photocopy of this order be placed on the files of connected cases.

(M.M. KUMAR)
JUDGE

(ALOK SINGH)
JUDGE

March 27, 2012
PKapoor